

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY
ORDINANCE COMMITTEE
MINUTES OF PUBLIC MEETING**

DATE.....September 1, 2004
TIME.....4:30 P.M.
PLACE.....COUNTY OFFICE
BLDG.
20 N. 3RD STREET
LAFAYETTE, IN 47901

MEMBERS PRESENT

Mark Hermodson
Carl Griffin
KD Benson
Gary Schroeder
Dave Williams
Robert Bowman

MEMBERS ABSENT

Steve Schreckengast

STAFF PRESENT

Margy Deverall
Kathy Lind
Sallie Fahey
Heather Prough
Jay Seeger, Atty.
Bianca Bullock

KD Benson called the meeting to order.

I. APPROVAL OF MINUTES

Gary Schroeder moved to approve the minutes of the August 4, 2004 meeting. Carl Griffin seconded and the motion carried by voice vote.

II. FINE TUNING THE SECTION REGARDING BOARDING, BREEDING AND TRAINING HORSES

Kathy Lind said horses have been discussed in the Administrative Officers meeting for several months. She explained that right now, the ordinance has two areas that refer to boarding and training horses: SIC 07-52 which allows boarding and training horses that do not belong to the resident, permitted in Residential, Industrial, Agriculture zones and the other area is SIC-02, which allows the same operations as SIC 07-52 to be performed for the occupant's horses or when another owner's horse is boarded for stud. She said this use is permitted in GB, HB and Industrial districts. She further explained that this means someone living in unincorporated Tippecanoe County in the R1 district, for example, can board and train an unlimited number of other people's horses, but can't have more than two horses of their own, as the ordinance permits two horses as an accessory use in any zone. She said that while there is no limitation on the number of horses a resident can board and train under SIC 07-52, she felt that most people have enough common sense to know that one cannot have 50 horses on one acre.

Sallie Fahey said that this section of the ordinance does not permit a public riding stable.

KD Benson asked if an aspect of training horses also included riding them.

Sallie Fahey responded that if a horse is trained for dressage, the riding aspect of the training would occur inside an arena. She also mentioned the owner of the facility will be training someone else's horse, not their own, or the owner of the horse will be training at the facility.

KD Benson reiterated that it is not permitted for a horse to be ridden, under the current ordinance, if it is not being trained.

Kathy Lind said that simply adding the residential zones to SIC 02 would allow all livestock in residential zones. She said staff decided it would be more appropriate to change SIC 07-52 Paragraph a wording to read: "to board and train horses that *do or do not belong to the occupant* of the premises." She explained this change would treat both situations the same by allowing horses in the same zones by right. Paragraph A would be amended so that SIC 02 would only apply when a non-occupant's horse is boarded for stud.

Sallie Fahey pointed out Sections 01 and 02 are mainly for agricultural production.

KD Benson asked if there are a lot of concerns regarding horses.

Heather Prough said that there have been several calls from residents in the R1 zone concerned about horses.

Kathy Lind said they are also proposing a change to SIC 07-52 by allowing it in the R1 zone but by eliminating the other Residential zones since those are primarily multi-family, in subdivision districts with smaller lots. She said staff has also decided to allow SIC 07-52 in the AA zone by right instead of requiring a special exception.

Bob Bowman pointed out that some R1B lots may be large enough for horses or the uses permitted under SIC 07-52.

Sallie Fahey said that the point of R1B zoning is to allow for smaller lots and are not big enough for horses.

Bob Bowman said that he thought to have two horses one must have a certain amount of acreage to support them.

Sallie Fahey said there is no acreage requirement under the ordinance.

Kathy Lind said restrictive covenants would keep horses out of subdivisions.

KD Benson asked about the possibility of a subdivision providing a place for residents to keep and ride horses.

Sallie Fahey said there was an amendment to the ordinance that covers riding facilities in developments, which house the horses of the residents.

Heather Prough pointed out there is a minimum 5-acre site requirement for that purpose.

KD Benson asked if there is are current R2 or R3 lots that are boarding and training horses.

Kathy Lind responded negatively and said that the issue has come up in the R1 zone.

Mark Hermodson said he feels smaller residential lots should not be permitted to board and train horses.

Kathy Lind reiterated that the smaller residential zones will be removed from the list and SIC 02 livestock production will be kept out of R1 zones.

Mark Hermodson moved to send the amendment and proposed changes to the full Area Plan Commission. The motion carried by voice vote.

III. CLARIFYING RURAL HOME OCCUPATIONS AND THE TERM "OFFICE FACILITY OF A BUILDING CONTRACTOR"

IV. ZONING REQUIRED FOR CONTRACTORS OF HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION

Kathy Lind stated that staff is seeking the opinion of the Committee regarding the term "office facility of a building contractor." She mentioned that there is currently a discrepancy in the interpretation between staff and the County Zoning Enforcement Officer. She explained the current ordinance wording regarding allowed rural home occupations and said that a building contractor's office facility is allowed to have outdoor storage of equipment or materials. She said that staff has interpreted this section of the ordinance to mean that a general contractor can have both his office and storage of materials on-site. She believes the County Zoning Enforcement Officer has a different interpretation.

Al Levy explained the three SIC codes in question are 15, 16 and 17 and then reviewed those codes. He pointed out the SIC has separated not only the type of equipment stored but what that equipment is used for. He said when NUZO was adopted, the office facility for a building contractor was not included, but was allowed as an added amendment. He then mentioned the 2003 change in the Rural Home Occupation was designed for the small operator who has between two and five acres, few pieces of light machinery and who met the bufferyard and setback requirements. He talked about the requirements in acreage for a rural home occupation under SIC 15 and 17. He presented slides and explained that the slides were photos of an individual who owns between 20-25 pieces of heavy machinery on a small piece of land who claims to be operating under SIC 15 or 17 which allows for the outdoor storage of machinery. He feels that lumping together SIC 16, which provides for outdoor storage of heavy machinery as a Rural Home Occupation, with SIC 15 and 17 should not be allowed. He asked the Committee not to change Section 5-5-6(a)(12).

KD Benson explained the discussion is not about changing the section, but rather the interpretation.

Al Levy stated that if one's interpretation is to allow heavy machinery in SIC 15 or 17, then the interpretation has been changed.

Kathy Lind said Al Levy combined the two items on the agenda. She stated she wanted to speak solely about offices and whether they are allowed to have outdoor storage. She asked if a contracting office can have outdoor storage on the property? She then said that the next item is to talk about SIC 16, but it is a totally separate issue.

Al Levy agreed.

KD Benson asked if there were examples in the county of a building contractor who has a home office.

Kathy Lind responded that she knows a building contractor who operates out of his home who owns a pickup truck and keeps supplies in a small pole building on his property. She explained there have been discrepancies between the Area Plan Commission Staff and the Zoning Enforcement office.

Al Levy said he agrees with Kathy except on the point of heavy machinery.

Kathy Lind asked Al Levy if a building contractor who uses his home as an office is allowed to have outdoor storage per the current ordinance wording or does it need to be changed.

Al Levy stated that he sees no problem with a small operator having outdoor storage but when the storage includes heavy machinery, there is a problem. He also pointed out the acceptable Rural Home Occupation list includes SIC 15 and 17, not 16.

Carl Griffin asked the classification of the equipment shown in Al Levy's slides.

Al Levy answered all the machinery is heavy machinery.

Carl Griffin asked if that machinery falls under SIC 15 or 17.

Al Levy responded negatively.

Kathy Lind explained SIC 15 includes building contractors and 17 includes specialists like septic tank contractors, foundation builders, heating/air conditioning, etc.

Jay Seeger said that the ordinance does not make a distinction in number of machines or size. He said a septic tank company owner might have twelve pieces of equipment, but is allowed to keep the machinery outside—because he is a specialist—as long as he meets bufferyard requirements.

Sallie Fahey said she believes a building contractor who falls within the limits of a Rural Home Occupation is allowed to have outdoor storage. She also explained the ordinance does not allow for any outdoor activity associated with the Rural Home Occupation other than storage of materials.

Al Levy pointed out the ordinance does not specifically allow a heavy equipment operator to have a Rural Home Occupation.

Sallie Fahey said the issue in question is what qualifies as a Rural Home Occupation for an office facility of a building contractor.

Kathy Lind reiterated that someone who qualifies under 15 and 17 is allowed to have outdoor storage.

Al Levy agreed.

Carl Griffin said they are also allowed to have 15 backhoes.

Al Levy agreed.

Kathy Lind said that she is satisfied with the interpretation.

Sallie Fahey said there is no question that Rural Home Occupations prohibit the offices of a contractor who would otherwise fall under SIC 16.

Al Levy pointed out that the office is not the problem.

Jay Seeger suggested a clarification of the parenthetical section of 5-5-6(a)(12) that would indicate that outside storage of materials would only be permitted for businesses associated with SIC 15 and 17.

Al Levy responded that is his current interpretation.

Jay Seeger explained as long as there is the clarification, then there would be no question as to the interpretation. He said that there is currently no limitation on the scope of outside storage.

Kathy Lind said Rural Home Occupations are allowed outside storage and specifically occupations under 15 and 17 have to meet certain parameters regarding bufferyards and setbacks.

Sallie Fahey said the ordinance does not prohibit outdoor storage of a building contractor classified under SIC 16.

Al Levy responded the ordinance does not allow that either.

Sallie Fahey explained a zoning ordinance in Indiana is always permissive unless specifically regulated.

Kathy Lind said the ordinance lists the uses that are permitted Rural Home Occupations but the ordinance is not limiting to these specific occupations, rather it presents the list as suggestive. She explained when she spoke to Mr. Hamilton, she believed that SIC 16 was similar enough to 15 and 17, but Al Levy did not have the same opinion.

Al Levy explained he believed the difference lies in that 15 and 17 are building-related Rural Home Occupations but 16 is not.

Sallie Fahey said it should be clarified whether or not a septic contractor, for example, could be included under SIC 17 because they are not a *building* contractor.

Al Levy said that a specialist is allowed under SIC 17.

Jay Seeger said there is still a need for clarifying language.

Kathy Lind stated she was satisfied with the language the way it was but she was unsure whether Al Levy needed a change in the wording.

Sallie Fahey responded there still is a need for clarification.

KD Benson added that it should be included that a Rural Home Occupation that falls under SIC 16, outside storage is not permitted.

Kathy Lind asked if SIC 16 qualifies as a Rural Home Occupation.

Sallie Fahey answered affirmatively, but only if there is an office, not if there is any equipment stored outside at the property.

KD Benson asked for clarification of SIC 16.

Al Levy responded SIC 16 includes heavy construction including streets, bridges, sewers, railroads, etc.

Carl Griffin expressed a concern regarding an overlap in the classification of machinery. He said that a contractor who falls under SIC 15 or 17 might very well use a bulldozer and to put limitations on the kind of machinery allowed for a SIC 15 or 17 contractor would be arbitrary.

Jay Seeger said he believes we are restricting the use. He feels that someone who is a homebuilder who falls under a Rural Home Occupation who has a bulldozer is allowed.

Al Levy asked if they could store the bulldozer outside.

Jay Seeger responded affirmatively.

Carl Griffin asked if they could have 15 bulldozers.

Jay Seeger responded affirmatively.

KD Benson said if they put in cement patios and basketball courts, they are not allowed to have a bulldozer.

Jay Seeger responded if that is the only work they do, they are not allowed to store a bulldozer outside because of the distinctions among SIC 15, 16 and 17. He pointed out the problem they are addressing is one of scope and use.

KD Benson said that more discussion regarding this topic is needed.

Daniel Moore, PO Box 848, Lafayette, said his client, Mr. Hamilton, has been alleged to operate both a junkyard and a dirt-moving business. He said Mr. Hamilton is trying to remedy the accusation of a junkyard. He said Mr. Hamilton's situation illustrates the problem with the ordinance as currently worded because he meets all the requirements of SIC 15, 16 and 17 yet has caused a problem with his outdoor machine storage. He said Mr. Hamilton runs a dirt-moving business as a self-employed contractor. He does not want to see the reality of his business lost on the aesthetics of the slides Al Levy showed. He explained he does not see the difference among the three SIC codes. He also said he is concerned that making an arbitrary decision regarding use of machinery would further complicate the issue. He believes the ordinance was designed to protect the Rural Home Occupation and to prevent major business operations in regards to scope. He further pointed out that Mr. Hamilton is not undertaking major development projects that would fall under SIC 16. He believes the ordinance is defining someone's intent and not use of the property.

Bob Bowman pointed out that Mr. Hamilton is probably no different than any other building contractor who has extra material that is stored outside.

Sallie Fahey said that when this issue is brought up for discussion again, more background information is needed such as the philosophy behind Home Occupations, both standard and rural and the amendment, which allows a building contractor as a primary use.

Mark Hermodson explained he was uncomfortable regarding scope. He said, regarding the slides that Al Levy showed, is something way beyond the capacity of the land, regardless of whether the business falls under SIC 15, 16 or 17. He believes the size of the property should be a key issue.

Jay Seeger said the ordinance does not regulate aesthetics but the problem is coming up with a meaningful definition of scope. He said Daniel Moore explained Mr. Hamilton's business was a one-man operation and in his opinion, if it is a one-man operation, then it is a junkyard as one man does not need a dozen bulldozers. He said the next step is trying to determine a proper scope in relation to SIC 15, 16 and 17.

Sallie Fahey said the next meeting, September 16, 2004, is promised to Jeff Hunter and discussions about feed manufacturing. She explained the October 6, 2004 meeting is devoted to the Heritage Farm Trails presentation. She said the next meeting that would be available to revisit this issue is October 21, 2004.

V. CITIZEN COMMENTS

None

VI. ADJOURNMENT

Gary Schroeder moved to adjourn. Carl Griffin seconded.

Respectfully submitted,



Bianca Bullock
Recording Secretary

Reviewed by,



Sallie Fahey
Executive Director